IN THE HIGH COURT OF UTTARANCHAL
AT NAINITAL
ORIGINAL JURISDICTION
Dated: Nainital the August 07, 2006
IIIrd Criminal Bail Application No. 648 of 2006
Order on the bail application of the accused.

Sham Shad S/o Shaukat Ali
R/o Village Ratuwanangla, P.S. Tanda,
Ram Nagar District Nainital …Applicant

Vs.

State of Uttaranchal …Opposite Party

And

Criminal Misc. Application No. 73 of 2004

Zamal-ud-din S/o Kamrud-din
R/o Village Chanakpur, P.S. Bazpur
District Udham Singh Nagar ….Applicant
Vs
1. State of Uttaranchal
2. Station Officer, P.S. Ramnagar
District Nainital …Opposite Party

Hon'ble B.C. Kandpal, J.

The applicant has applied for bail in case Crime No. 31 of 2005 Under Sections 395, 397, 412, 120-B, 216-A I.P.C., P.S. Ramnagar, District Nainital.

Heard Ms. Krishi Shukla, learned counsel for the applicant, learned A.G.A. for the State and perused the record.

The sole controversy in this case is that this Court has passed two contradictory orders in the same Sessions Trial as from one Court, there is an order dated 24.02.2004 by which the further proceedings of the case Crime No. 31 of 2003 under Sections 395, 397, 412, 120-B, 216-A I.P.C. P.S. Ramnagar was stayed. This order was passed in the Criminal Misc. Application No. 73 of 2004 filed by one accused Zamal-Ud-Din under Section 482 Cr.P.C.

Another co-accused Shamshad also moved a bail application before this Court and his bail application was rejected. He again moved the second bail application and the same was also rejected by the Hon'ble Judge of this Court and while rejecting the second bail application a direction was issued to the trial court to expedite the trial and dispose of the same in accordance with law, preferably within a period of three months. This order was passed on 07.08.2004.

The petition under Section 482 Cr.P.C.filed by the co-accused Zamal-Ud-Din has not been disposed of as yet. Therefore, in view of the aforesaid orders, the sessions trial pending before the court could not be disposed of expeditiously.

..2

Now co-accused Shamshad has again moved the third bail application before this Court and during the arguments of this bail application, learned counsel for the applicant has invited my attention towards the aforesaid two orders passed by this Court, I therefore, directed that the petition under Section 482 Cr.P.C. Zamal-Ud-Din Vs State & Others (Criminal Misc. Application No. 73 of 2004) be also summoned from the court so that the matter may be disposed of in accordance with law.

Today Sri M.S.Pal, learned senior Advocate is present on behalf of the petitioner –Zamal-Ud-Din.

Having considered the submission advanced by the learned counsel for the parties, I am of the view that there is no abuse of process of court in Criminal Misc. Application No. 73 of 2004. The allegation made by the prosecution case are concerned with the disputed question of fact which can be decided by the trial judge.

Accordingly, the petitioner under Section 482 Cr.P.C. lacks merit and dismissed.

However, the trial court is directed to decide the case arising out of Case Crime No. 31 of 2003 under Sections 395, 397, 412, 120-B, 216-A of I.P.C. expeditiously. In case, if the petitioner Zamal-Ud-Din appears before the court concerned in order to obtain the bail, his bail application shall be disposed of expeditiously.

I also do not find any new good ground for granting the bail to the applicant at this stage.

Accordingly, the third bail application is rejected.

Let the copy of this order be placed in Criminal Misc. Application No. 73 of 2004.

(B.C. Kandpal,J.)

Dated : 07-08-2006
ASWAL